IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Ganpat Ram Vs. State of Rajasthan

S.B.CR. MISC. BAIL APPLICATION NO.5154/2007

DATE OF ORDER :: October 30, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.J.R.Beniwal, for the petitioner.

Mr.Ashok Upadhyaya, P.P. for the State.

BY THE COURT:

The petitioner herein Ganpat Ram has filed the bail application under section 439 Cr.P.C. challenging the order dt. 17.8.2007 passed by Addl. Sessions Judge, Nagaur (for short `the trial court' hereinafter), whereby the bail application filed by the petitioner under section 439 Cr.P.C. was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Perused the order impugned and the challan papers.

On a report lodged by injured Shrikishan alias Shiv Ram, the police registered a crime report under section 307 I.P.C. and section 27 of the Arms Act. During investigation, the petitioner absconded and could not be apprehended for a period of about 10 months. Declaring the petitioner absconder, the police filed the challan under section 299 Cr.P.C. against the petitioner for the offence under section 307 I.P.C. and 27 of the Arms Act. The petitioner moved a bail application before the trial court, which came to be dismissed by order impugned dt. 17.8.2007. Hence, this bail application.

It is contended by learned counsel for the petitioner that none of the injuries suffered by the injured is dangerous to life and all the injuries are simple in nature and, therefore, no offence under section 307 I.P.C. is made out. It is further contended that the petitioner had consumed alcohol and, therefore, under the intoxication, he caused the gunshot injuries to the injured, first informant and, therefore, seeks bail.

Learned Public Prosecutor seriously opposes the bail application and contends that the petitioner repeatedly caused gunshot injuries on vital parts of the injured i.e. on the skull and right side of the head and chest wall. The skull as well as chest are most vital parts of the body and the petitioner had an

intention to commit the murder of the injured by selecting most vital parts causing injuries on the head and chest and, therefore, the trial court was justified in rejecting the bail application filed by the petitioner.

I have gone through the order of the trial court rejecting the bail application by well reasoned order.

On careful perusal of the statement of injured Shrikishan alias Shiv Ram, eye-witness Smt. Radha Devi and other persons, who reached the spot on hearing the gunshot, almost all the witnesses stated that it was the present petitioner, who caused the gunshot injuries. Injured Shrikishan alias Shiv Ram and Smt. Radha Devi, the eye-witness stated that the petitioner first abused the injured Kishan alias Shiv Ram using filthy language addressing him to be DOG and to stay and stated that he will kill him and, therefore, when the injured was going, the petitioner followed him with a gun and caused repeated gunshot injuries, which are evident from the injury report placed on record. The Doctor, who examined the injured found two injuries by gunshot, which are caused by firearm and two foreign bodies were found in the head and chest of the injured.

On careful perusal of the statements of the prosecution

witnesses, in my view, there is an evidence in clear terms that the petitioner stated that he would kill the injured and thereafter he followed him and caused repeated gunshot injuries on the vital parts of the injured and, therefore, it cannot be said at this stage that the offence under section 307 I.P.C. is not made out. I am fortified my view with the catena of decisions of Hon'ble Supreme Court in Girja Shankar Vs. State of U.P., JT 2004 (2) SC 140, Sarju Prasad Vs. State of Bihar, AIR 1965 SC 843, Bappa alias Bapu Vs. State of Maharashtra, AIR 2004 SC 4119, Vasant Vithu Jadhav Vs. State of Maharashtra, (2004) 9 SCC 31, R. Prakash Vs. State of Karnataka, (2004) 9 SCC 27,

In Girja Shankar Vs. State of U.P. (supra), the Hon'ble Supreme Court observed that for constituting an offence under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. The Apex Court further held as under:-

> "It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction

> between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section."

In Sarju Prasad Vs. State of Bihar (supra), the Hon'ble Supreme Court held that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not itself sufficient to take the act out of the purview of Section 307 IPC. The same view has been reiterated by the Hon'ble Supreme Court in State of Maharashtra Vs. Balram Bama Patil & ors., (1983) 2 SCC 28, wherein the Hon'ble Apex Court held as under:-

> "It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in

> some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 merely because the injuries inflicted on the victim were in the nature of a simple hurt."

In Bappa alias Bapu Vs. State of Maharashtra (supra), the accused along with victim had gone to cinema to witness movie and were coming back by bicycle. Suddenly accused got down from bicycle, stabbed the victim on his stomach and back and pressed his neck. It was contended that keeping in view the nature of the injuries sustained, the offence cannot be said to be one covered by Section 307 IPC. While affirming the conviction under Section 307 IPC, the Hon'ble Supreme Court held as under:-

> "It is sufficient to justify a conviction under Section 307 IPC if there is present an intent couple with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and

> may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

In Vasant Vithu Jadhav Vs. State of Maharashtra (supra), the accused opened fire from a gun from a very close range at victim when he was sleeping on a cot. The shot hit the springs of the cot. The bullet broke into pieces and three such pieces struck the victim. Upholding the conviction under Section 307 IPC, the Hon'ble Supreme Court held as under:-

> "It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

In R. Prakash Vs. State of Karnataka (supra), the Hon'ble Supreme Court observed that intent coupled with some overt act in execution thereof is sufficient for constituting an offence under Section 307 IPC. The Apex Court further held as under:-

> "It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

Thus, in view of the law laid down by the Hon'ble Supreme Court, for constituting an offence under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted and it is sufficient to justify a conviction under

Section 307 IPC if there is present an intent coupled with some overt act in execution thereof. In the instant case, repeated gunshot injuries have been caused to injured Shrikishan alias Shiv Ram on the vital parts of the body of the injured i.e. head and chest, therefore, at this stage, in my view, it is not a fit case to grant bail to the petitioner under section 439 Cr.P.C.

More so in the instant case, the accused had been absconding after committing the alleged offence for about 10 months and ultimately the police was to file the challan under section 299 Cr.P.C. after declaring him to be absconder and, therefore, the possibility cannot be ruled out that if the petitioner is released on bail, he would again abscond and the trial would be staled.

In Jagtar Singh vs. Satendra Kaur alias Bhavana Grover & Ors., **2002 Cr.L.R. (SC) 807**, the Apex Court held that when the accused are absconding, there is no question of granting anticipatory or even regular bail.

Thus, in view of the aforesaid decisions of the Hon'ble Supreme Court, in my view, it is not a fit case to release the petitioner on bail at this stage.

The bail application filed by the petitioner under section 439 Cr.P.C. is, therefore, dismissed. However, it will be open for the petitioner to move a fresh bail application after the statement of injured Shrikishan alias Shiv Ram is recorded by the trial court.

[H.R.PANWAR],J.

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